

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TIMOTHY GREG TACKETT,

Petitioner,

-vs-

Case No. 12-C-875

**JOHN PAQUIN, Warden,
Racine Correctional Institution,**

Respondent.


DECISION AND ORDER

Timothy Greg Tackett was convicted of sexually assaulting his daughter. In this action under 28 U.S.C. § 2254, Tackett argues that the trial court erred by communicating with the jury outside his and defense counsel's presence. The Wisconsin Court of Appeals rejected this argument, finding that the error was "harmless beyond a reasonable doubt." *State of Wis. v. Tackett*, 801 N.W. 2d 349, 2011 WL 2342513, at *2 (Wis. Ct. App. June 15, 2011). This decision was not contrary to, or an unreasonable application of, clearly established Federal law, as determined by the United States Supreme Court. § 2254(d)(1). The Supreme Court has "consistently held that the government may show that the ex parte contact was harmless." *Ellsworth v. Levenhagen*, 248 F.3d 634, 641 (7th Cir. 2001) (citing *Rushen v. Spain*, 464 U.S. 114, 120 (1983) and *Remmer v. United States*, 347 U.S. 227, 229 (1954)).

Therefore, Tackett's petition is **DENIED**. The Court will not issue a certificate of appealability. Rule 11(a), Rules Governing Section 2254 Cases. The Clerk of Court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 14th day of February, 2013.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge